TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 38

JULIUS SALSBURG, APPELLANT,

vs.

STATE OF MARYLAND

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED APRIL 11, 1953

Probable jurisdiction noted May 18, 1953

SUPREME COURT OF THE UNITED STATES

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INDEX

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[fol. a] In the Court of Appeals of Maryland, October Term, 1952

No. 49

Joseph John Rizzo, Wm. Raynard Nicholson, Julius Salsburg, Appellants,

vs.

State of Maryland, Appellee.

Three Appeals from Circuit Court for Anne Arundel County (Michaelson, J.)

Appendix for Appellants—Filed September 5, 1952

APPENDIX TO APPELLANT'S BRIEF NO. 49

DOCKET ENTRIES

May 29, 1952—Warrant from L. J. De Alba J. P. and Prayer for Jury Prayed by State.

June 13, 1952—Order to enter appearance of Louis M. Strauss and Joseph Leiter.

June 13, 1952—Motion to dismiss warrant and return of property to the defendant fd.

June 13, 1952—Motion overruled.

June 13, 1952—Plea of Not Guilty — Court Trial.

June 13, 1952—Motion for directed verdict fd. — Overruled.

June 13, 1952—Guilty — 6 months, $1,000.00 fine and costs.

June 13, 1952—Order for appeal filed.

June 13, 1952—Application and recognizance filed in sum $2500.00.

June 16, 1952—Designation of record.

June 23, 1952—Testimony filed.

July 28, 1952—Petition to extend time for filing and transmission of record filed and Court of Appeals order dated July 15, 1952.

The Docket Entries in Nicholson and Salsburg cases are identical.

STATE WARRANT

State of Maryland, Anne Arundel County, to-wit:

To Daniel Bratton Chief of Police, of said County, Greeting:

WHEREAS, Complaint has been made before me, the subscriber, one of the Justices of the Peace of the State of Maryland, in and for the said County, upon information and oath of Capt. Wilbur Wade who charges that Julius Salsburg did on or about the 21st day of May, 1952 at 5619 Ritchie Highway, Brooklyn, A. A. Co., Md. did violate Sect. 291 of Art. 27, Annotated Code of Md. in that the Defendant did make or sell a book or pool on the result of a running race of horses.

You are therefore commanded immediately to apprehend the said Julius Salsburg, 3709 Key Ave., Balto., Md. and bring him before me, the subscriber, or some other Justice of the said State, in and for said County, as aforesaid, to be dealt with according to law. Hereof fail not, and have you then and there this warrant.

Given under my hand and seal this 22nd day of May in the year of our Lord, 1952.

LOUIS J. De ALBA, J. P. (Seal)

The Warrants in Rizzo and Nicholson are identical.

MOTION TO DISMISS PROCEEDINGS AND QUASH WARRANT AND RETURN PROPERTY TO THE DEFENDANTS.

To the Honorable, the Judges of said Court:

The traverser, by Joseph Leiter and Louis M. Strauss, his attorneys, moves to quash a warrant issued in this cause to Captain Wilbur Wade, under which person the premises of the traverser was broken into and searched

and certain items to be offered in evidence against the defendant in the trial of this cause were procured, and in support of this motion and petition sets forth the following reasons:

1. That this Court does not have jurisdiction to try this case on the warrant filed in these proceedings.

2. That the charge against the Traverser is neither by indictment or information as required by the law and rules promulgated by the Court of Appeals of Maryland, effective January 1, 1950.

3. That there has been no verdict or trial on the warrant issued by the Trial Magistrate and, therefore, these proceedings are not in the nature of an appeal from the Trial Magistrate.

4. That the warrant issued in these proceedings was issued by the Trial Magistrate on the oath and information of Captain Wilbur Wade, which said information was obtained from evidence illegally obtained from your Petitioner as a result of an illegal and improper search and seizure, guaranteed the Defendant under the Maryland State and United States Constitutions, as well as the existing State Laws relative to search and seizure and search warrants relating thereto.

5. The information and oaths sworn to by Captain Wilbur Wade was obtained and is formulated on the basis of property taken from your traverser which is not admissible in evidence against your traverser at the trial of this cause.

6. That the property taken from your Petitioner as aforesaid, and by the Officers accompanying him, is not admissible in evidence against your Defendant, at the trial of this cause.

7. And for other reasons to be assigned at the hearing of this motion.

Wherefore, Your Petitioner Prays:

1. That the warrant issued to Police Officer Captain Wilbur Wade be quashed.

2. That these proceedings on said warrant be dismissed.

3. That the articles, items and property enumerated in the Return of the Police as taken from the premises of your Defendant, and all other property of the Defendant in custody of the State taken from this Defendant by virtue of the aforesaid illegal entry and search of your Petitioner and his premises, and by virtue of the aforesaid warrant for his arrest be returned to your Petitioner.

JOSEPH LEITER,

LOUIS M. STRAUSS,

Attorneys for Traverser.

Identical Motions were separately filed on behalf of Nicholson and Salsburg.

(St. Tr. 1-9):

TESTIMONY ON MOTION TO SUPPRESS

(Mr. Strauss) We can stipulate that there is no search warrant in this case.

(The Court) Let the record so show that the State and Counsel for the defendants agree that no search warrant was issued for invasion of the premises.

(Mr. Strauss) We will take the testimony on whether or not there was a crime committed in their presence. Call Captain Wade.

(Mr. Morton) Could the State be enlightened as to exactly what the purpose of this examination is.

(The Court) To determine whether or not the time the premises were invaded or entered, the officers saw any-

thing which would indicate that there was a commission of a misdemeanor.

(Mr. Morton) May I make further inquiry as to whether the interrogation is going to be confined to what the officers saw prior to entrance into the premises or what they saw subsequent to the entrance.

(The Court) Prior to the entrance as the Court understands it. In other words, it comes within the category of whether or not they had probable cause to enter the premises, based on the search warrant as issued, whether they observed anything that would indicate to a man experienced as an officer of the law, the nature of the violation of the gambling law going on. It is so closely related to no search warrant, there seems to be a fine distinction. If they had a right, assuming that the House Act had been amended and that amendment is validated, they wouldn't have to worry about a misdemeanor or the commission of any kind, they would have a right to go into the premises on the assumption the amendment of the House Act gave them that right. The position of the defendants as the Court sees it in support of his motion, he wants to support the stipulation by having the record show that irrespective of whether or not a search warrant was issued, the conditions were such that the officers were not justified in entering the premises because there was nothing happening on the outside to indicate to them that there was anything wrong or unusual going on.

(Mr. Strauss) We also stipulate that the traversers involved were in possession of the premises at the time.

(Mr. Morton) No, the State won't concede that.

CAPT. WILBUR C. WADE, a witness of lawful age, being first duly sworn, deposes and says:

By Mr. Strauss:

1. Give your name. A. Capt. Wilbur C. Wade.

2. Captain Wade, you are a member of the Anne Arundel County Police Force? A. Yes.

3. You are Capt. Wilbur C. Wade, who swore to the warrant of John Joseph Rizzo? A. Yes I am.

4. And William Raymond Nicholson and Julius Salsburg; you are the officer who swore the warrant? A. Yes, sir.

(Mr. Strauss) May it please the Court, we submit these three warrants in support of the motion in 1684 Criminals, 1685 Criminals and 1686 Criminals.

5. On May 21, 1952, did you have occasion to arrest three men involved in these proceedings? A. Yes I did.

6. Will you state for the record where you arrested them? A. In a small building in the rear of Roland Terrace Garage and the intersection to Third Street and Governor Ritchie Highway.

7. Who accompanied you when you made the arrest? A. Colonel Bratton, Lt. Baum, Officer George Welham and Officer Charles Gleim.

8. What time of the day did you get there? A. Approximately one p. m.

9. When you got there, describe the building in which you arrested them? A. It is a two-room building and Mr. Travers lives in the front room and the rear room is 20 by 16; I have a photograph of the building.

10. Will you describe the number of doors in the building and the number of windows in it? A. There were two doors, one to the front room, one to the rear room; the door to the rear room was on the west side of the building.

11. When you arrived there, was any doors open in the building, any windows? A. The front door was open in the front room and the room to the rear was not open.

12. The front door that was open led into the premises occupied by whom? A. Mr. Travers the night watchman for Mr. Utz.

13. How did you get into the second part of this building? A. We attempted to get someone to come to the door and open it; no one answered; we finally took an axe and pried the door open.

14. Did you see inside the second room from the outside? A. No, we couldn't; the window was painted; there was only one small window.

15. When you got there to make this arrest, did you see any of these three men? A. No sir, I did not.

16. Did you take certain articles from this place when you arrested these men?

(The Court) I understand what went on inside of the premises is not the subject matter of this proceeding so far.

17. When you got to the premises, did you hear anything? A. We tried to but we couldn't hear any noise at the time.

18. How did you get the door open? A. We forced it open with an axe.

By Mr. Morton:

1. Captain, did you observe any wires leading into the premises? A. Yes sir, we found three telephone wires, call boxes on the north side of the Roland Terrace Garage; we traced these wires to a small little pipe —

(Mr. Strauss) Object.

(The Court) Was that done before you entered or after? A. Before.

(Mr. Strauss) How long before? A. Approximately ten minutes. These wires ran into a pipe under the ground over to the small building.

2. Did you have any information in your possession as to the number of phones in that building? A. Yes, we did.

3. Did you have information that there was bookmaking being conducted in the building?

(Mr. Strauss) Objected to.

(The Court) Sustain the objection. What was the size of this room that you finally entered? A. 10 by 16.

CROSS EXAMINATION

By Mr. Strauss:

1. Captain, based on these telephone wires, leading to this building, on the basis of this information, you broke into this room, is that right? A. Upon the advice of the State's Attorney.

(The Court) The Court will overrule the motion on the theory that the amendment to the Bouse Act is constitutional at this point and that being so, the Court is not concerned with how the evidence is presented.

(Mr. Strauss) We want to put another witness on for the purpose of the record, the man testifying only on this motion.

(The Court) Yes this is all before the pleadings in the case in support of the contentions set forth in the motion.

JULIUS SALSBURG, a witness of lawful age, after being first duly sworn, deposes and says:

By Mr. Strauss:

1. Your name is Julius Salsburg? A. Yes sir.

2. Are you familiar with the premises that were raided the 21st of May, 1952 and were you arrested as testified to by Capt. Wade? A. Yes sir.

3. Did you lease these premises? A. I rented it, yes sir.

4. Who did you pay rent to? A. John Utz.

5. How many months did you pay rent there? A. Two months.

(The Court) Do you have anything to show, any receipts? A. No I haven't.

6. How much did you pay? A. Fifty dollars a month.

7. Did you pay the telephone bill of these premises? A. A. Yes I did.

8. Whom did you pay it to? A. Telephone Company.

9. Where? A. On Light Street.

10. Were you in these premises when the door was broken down and you were arrested? A. Yes sir, I was.

11. Did anybody read you a search warrant? A. No they did not.

CROSS EXAMINATION

By Mr. Morton:

1. How long have you been renting these premises? A. Approximately two months.

2. Do you remember the beginning date? A. No I do not, sir.

3. How did you pay the rent? A. To Mr. Utz.

4. In cash? A. In cash.

5. When did you pay it? A. I think it was on or about the first of the month.

6. Whose name was the telephone in? A. I understood it was in the Ritchie Highway.

7. Was it, or wasn't it? A. The Ritchie Transfer Company.

8. Are you an employee of the Ritchie Transfer Company? A. No I am not.

(The Court) What does the Ritchie Transfer Company do? A. I wouldn't know, Your Honor.

(The Court) Who had the phone put in their name? A. That I couldn't even say.

(The Court) You didn't? A. No sir.

9. Whose permission did you have to pay this telephone bill? A. The party who brought me to Mr. Utz.

10. Who is the party who brought you to Mr. Utz. A. Mr. Bass.

11. What's his full name? A. Mr. Harry Bass.

12. Did he give you the money to pay to Mr. Utz? A. No, he did not.

13. Are you sure of that? A. Positive.

(The Court) The Court just wants to caution you not to intimidate you. You are under oath. I say this for your own benefit. I want you to tell the truth. If it develops that you have committed perjury, you will be indicted for perjury and prosecuted accordingly. This is a serious matter. The Court understands human nature and the nature of these rackets and everything that goes with it. You are sworn to tell the truth, the Court advises you to tell the truth. If something develops that shows that you have made false statements which means that you have perjured yourself you will have a serious charge in front of you, possibly more serious than your present predicament. Go ahead and reply to the questions as you know them.

14. What days of the week would you occupy these premises? A. Six days a week.

15. Excluding Sunday? A. Yes sir.

16. What time did you arrive? A. No set time.

17. What time would you leave? A. No set time.

18. What did you use the premises for? A. Well, you should know that.

(Mr. Strauss) Answer the question? A. Booking horses.

19. Is that your regular business? A. That's what I was doing at the time.

20. How long had you been doing it?

(Mr. Strauss) We object to that.

(The Court) Let it go at that.

21. Did you have a written lease for these premises? A. No I did not.

22. Did you have an arrangement as to the length of time your lease was to run? A. No I didn't.

(The Court) Explain to the Court just how you arranged to lease these premises. To whom did you talk, when did you talk about what terms were arranged. Give me a picture of what you did when you wanted to go on the premises. You did go on there by virtue of this lease? A. Well, Your Honor, I heard of a place that had three phones and knew a party that had owned the phones, at least I thought he did; I won't go on record as saying he owned them; I don't know, and I asked him to do me a favor, would he rent them to me, would he give them to me, or however he felt and he said, "Well I don't know; let's go up and speak to Mr. Utz" and we did, and that's how it came about.

(The Court) What did you say to Mr. Utz? A. I asked him what he wanted for the rent of this particular premises and he mentioned a certain stipulated sum of money, $50.00, and I asked him would it be satisfactory if I would rent it, and he said that it would and I did.

(The Court) Did he ask you what you were going to do on the premises? A. No he did not, at least, I can't recall it.

(The Court) There were three phones in there at the time? A. Yes sir.

(The Court) In whose name were they listed? A. At the time I got the first bill, it was the Ritchie Transfer Company.

(The Court) Then you went into possession of the premises? A. Yes sir.

(The Court) You have no receipts or anything to show you rented it? A. Your Honor, I didn't ask for any.

(The Court) Why not? A. Well to be honest with you, I didn't think it was necessary.

(The Court) You didn't want any record to show, did you? A. Well, no, I wasn't thinking that particular thing at the time.

(The Court) You don't know who the Ritchie Transfer Company is? A. No sir I do not.

(The Court) You don't know what business they were engaged in? A. All I know is that these particular phones were available.

(The Court) Did anybody who represented himself as an officer or employee of the Ritchie Transfer Company tell you that you could go into possession of the premises? A. No sir, I don't believe so.

(The Court) Was this a Corporation? A. I really don't know, sir.

(The Court) Where did you get the name from, Ritchie Transfer Company? A. That was already there; I had nothing to do with it, Your Honor.

CAPT. WILBUR C. WADE, having already been sworn, deposes and says:

By Mr. Strauss:

1. You do have a warrant out for a person named Bass and you haven't apprehended him yet? A. Yes sir, we do.

(The Court) All three motions in each case are overruled.

(Mr. Strauss) Now we will agree to try all three cases together and the plea is not guilty.

(The Court) Let the record show by agreement of counsel and the State Nos. 1684, 1685 and 1686 Criminal are consolidated and tried together, defendants plead not guilty in each case, election of trial before the Court.

[fol. 16] IN THE COURT OF APPEALS OF MARYLAND, OCTOBER TERM, 1952

No. 49

JOSEPH JOHN RIZZO, WM. RAYNARD NICHOLSON, JULIUS SALSBURG

v.

STATE OF MARYLAND

OPINION—Filed December 12, 1952

Chief Judge Markell delivered the Opinion of the Court:

These are appeals from judgments and sentences on conviction of bookmaking. Defendants were arrested on warrants charging bookmaking. Before the magistrate the State's Attorney prayed jury trial. In the circuit court the case was tried without a jury. Code of 1951, Art. 52, sec. 14. *Wilson* v. *State*, —— Md. ——, 88 A. 2d 564.

Before issuance of the warrants for arrest, and without a search warrant or any warrant at all, members of the Anne Arundel County police force, "upon the advice of the State's Attorney", entered by the use of an axe the rear room of a small two-room building in the rear of Roland Terrace Garage, at the intersection of Third Street and Governor Ritchie Highway. There the officers arrested defendants and seized "incriminating evidence" [appellants' brief], the nature of which is not specified in either brief or appendix. There were three telephones there, and three telephone wires leading in. Motions of each defendant that "the articles, items and property enumerated in the return of the police as taken from the premises of your defendant, and all other property of the defendant in custody of the State taken from this defendant * * * be returned to your petitioner" were overruled. Presumably [fol. 17] (it does not affirmatively appear) the articles seized were admitted in evidence.

As amended by Chapters 704 and 710 of the Acts of 1951 [approved May 7, 1951, exective June 1, 1951], the Bouse Act (Code of 1951, Art. 35, sec. 5) contains a proviso, "Provided, further, that nothing in this Section shall prohibit

the use of such evidence in Anne Arundel, Wicomico and Prince George's Counties in the prosecution of any person for a violation of the gambling laws as contained in Sections 303-329, inclusive, of Article 27, sub-title 'Gaming', or in any laws amending or supplementing said sub-title." As to Anne Arundel County this proviso was added by Chapter 704, as to Wicomico and Prince George's by Chapter 710. Defendants contend that Chapter 704 denies them the equal protection of the laws and is unconstitutional. The State contends that the act is constitutional, and also that defendants had no title or interest in or to the premises searched and therefore no right to complain of the search and seizure as illegal.

There is no evidence—and no allegation other than any implication in mention of "the premises of your defendant" in the unsworn petitions for return of property seized—that defendants Rizzo and Nicholson had any interest in the premises. Defendants say it is sufficient that they claim the property seized. They cite *United States* v. *Jeffers*, 342 U. S. 48, and the often repeated statement of this court that "one cannot complain of an illegal search and seizure of premises *or* property which he neither owns, nor leases, nor controls, nor lawfully occupies, nor rightfully possesses, or in which he has no interest." [Italics supplied]. *Baum* v. *State*, 163 Md. 153, 157. Although this statement in the *Baum* case was believed to be supported by many cited state and federal cases, including one Supreme Court case, it appears that recent Supreme Court cases recognize a broader right to complain. *United States* v. *Jeffers*, 342 U. S. 48, citing *McDonald* v. *United States*, 335 U. S. 451, [fol. 18] 456. In the *Jeffers* case narcotics seized without a search warrant in a hotel room of defendant's aunts, in the absence of defendant and his aunts, were ordered suppressed as evidence, though not returned to defendant because they by law were contraband. The decision was not based on the ground that the seizure was illegal, though the search was not (as to the defendant), but on the ground that "the search and seizure" were "incapable of being untied", and therefore were an invasion of the defendant's rights, though he had no interest in the premises. We need not further pursue the *ratio decidendi* in the *Jeffers* case.

If it supports defendants' contention in the instant case, it is contrary to the often repeated statement of this court in the *Bouse* case.

We are not infrequently reminded by counsel of our statement in *Wood* v. *State*, 185 Md. 280, 285, that "The Bouse Act and the Act of 1939 amount to adoption *pro tanto* of the Supreme Court decisions under the Fourth Amendment." The context shows that the extent of *pro tanto* was the meaning of "illegal search and seizure" as dependent upon want of "probable cause".

In the instant case defendants were convicted on a charge of "making or selling a book or pool on the result of a running race of horses". "Incriminating evidence" to support that charge necessarily showed that defendants were "using and occupying" the building for bookmaking, an offense committed in the officers' presence. Since, therefore, defendants Rizzo and Nicholson could not complain that the search of the premises, in which they had no interest, was illegal, the arrest of them without a warrant and seizure of this evidence was not unlawful as to them.

Defendant Salsburg testified that he rented the premises by an oral lease, at $50 a month, for no definite term, from a named owner, and that he paid the rent to the owner in cash. This testimony was uncorroborated but uncontradicted. It was received by the judge with evident suspicion, but the judge did not say that he did not believe it or that he overruled Salsburg's motion to return on that [fol. 19] ground. We cannot hold that the judge (who saw the witness) could not believe Salsburg's testimony and should have overruled his motion on that ground. The fair implication, in the absence of anything to the contrary, is that the motions were overruled because the act was held constitutional and not because Salsburg had no right to raise the question. *Cf. Lambert* v. *State*, —— Md. ——, 75 A. 2d 327, 328.

In *Sugarman* v. *State*, 173 Md. 52, 57-58, we held that a motion, before trial, to declare a search warrant null and void and to suppress use of the articles seized as evidence and compel return of them was "founded upon no statute of this State", nor "supported by precedent to justify its propriety." In *Smith* v. *State*, 191 Md. 329, 334, and in

Lowe v. State, 198 Md. 66, 73, 66 A. 2d 661, 663, we noted that such a motion to quash a search warrant is now authorized by statute. Code of 1951, Art. 27, sec. 593. In the instant cases the motions made are not authorized by statute, but are closely analogous to motions to quash. Rule 3 (1) of the Criminal Rules of Practice and Procedure provides that, "Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion." Rule 3 (4) provides that, "A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue." In the instant cases the court did dispose before trial of the questions thus raised. This rule includes the motions in the instant cases.

The question of the constitutionality of Chapter 704 is therefore presented for decision in Salsburg's case. We have decided to order a reargument on this constitutional question alone in Salsburg's case. For the reasons already stated, the judgment will be affirmed as to Risso and Nicholson.

Judgment affirmed with costs as to Risso and Nicholson. Reargument of Constitutional Question only ordered as to Salsburg.

Filed: December 12, 1952.

[Vol. 20] In the Court of Appeals of Maryland, October Term, 1952

No 49

Julius Salsburg

vs.

State of Maryland

Opinion—Filed February 5, 1953

Delaplaine, J., delivered the Opinion of the Court.

Julius Salsburg, who was convicted by the Circuit Court for Anne Arundel County of bookmaking on horse races,

is challenging here the constitutionality of Chapter 704 of the Laws of 1951, which amends the statutory rule of evidence known as the Bouse Act, Laws 1939, ch. 194, by adding a proviso that the Act shall not prohibit the admission of illegally procured evidence in Anne Arundel County in prosecutions for violations of the State gambling laws.

The Act was also amended by Chapter 710 of the Laws of 1951, which provides that the Act shall not prohibit the admission of such evidence in Wicomico and Prince George's Counties. Thus the Act, as codified in Code 1951, art. 35, sec. 5, provides as follows:

> "No evidence in the trial of misdemeanors shall be deemed admissible where the same shall have been procured by, through, or in consequence of any illegal search or seizure or of any search and seizure prohibited by the Declaration of Rights of this State * * *. Provided, further, that nothing in this section shall prohibit the use of such evidence in Anne Arundel, Wicomico and Prince George's Counties in the prosecution of any person for a violation of the gambling laws as contained in Sections 303-329, inclusive, of Article 27, sub-title 'Gaming', or in any laws amending or supplementing said sub-title."

Salsburg and two other men, Joseph John Rizza and Wil-[fol. 21] liam Raynard Nicholson, were arrested by five officers of the Anne Arundel County Police Department on May 21, 1952, in a two-room building in the rear of a garage along the Governor Ritchie Highway at Brooklyn. When the police officers appeared on the scene, the front door was open but the door to the rear room was locked. They rapped on the door to the rear room, but, as no one answered, they broke the door open with an ax. Upon entering the room they arrested defendants and seized three telephones, two adding machines, racing forms and other paraphernalia. While the officers were in the building many telephone calls came from persons wanting to make bets.

Before the trial defendants filed motions to suppress the evidence and dismiss the proceedings. It was conceded that the police officers raided the building without a search warrant and that they seized the gambling paraphernalia il-

legally. Defendants contended that the 1951 amendment of the Bouse Act violates the Fourteenth Amendment of the Constitution of the United States, and that the paraphernalia were inadmissible under the Bouse Act as it stood before the amendment. The Court overruled the motions and admitted the paraphernalia in evidence. The Court thereupon found both defendants guilty and sentenced each to the Maryland House of Correction for six months and to pay a fine of $1,000.

On December 13, 1952, the Court of Appeals held, in an opinion by Chief Judge Marbutt, that Bisso and Nicholson could not complain of the illegality of the search and seizure, because they had no interest in the raided premises. Salzberg, on the other hand, testified that he was lessee of the building at the time of the raid. Therefore, the paraphernalia would be admissible as to him only in case the 1951 statute is valid. We ordered a reargument of his appeal on the question of the constitutionality of the statute. Bisso v. State, Md., 92 A. 2d 220.

Prior to the enactment of the Bouse Act in 1920, this Court held that where evidence offered in a criminal trial is otherwise admissible, it will not be rejected because it was obtained illegally. Meisinger v. State, 155 Md. 195, 141 A. 523, 142 A. 190; Hayward v. State, 161 Md. 685, 158 A. [fol. 22] 307; Bean v. State, 163 Md. 153, 161 A. 244. This is still the rule in prosecutions for felonies in this State. Marshall v. State, 182 Md. 379, 35 A. 2d 115; Delnegro v. State, Md., 91 A. 2d 241, 244. The Bouse Act changed the rule only in trials for misdemeanors.

We find no reason to hold that the 1951 statute, making illegally procured evidence admissible in certain trials in Anne Arundel County, is in conflict with the Fourteenth Amendment of the Federal Constitution or Article 23 of the Maryland Declaration of Rights. It is true that in Weeks v. United States (1914), 232 U. S. 383, 34 S. Ct. 341, 58 L. Ed. 652, the United States Supreme Court held that evidence obtained in violation of the Fourteenth Amendment is inadmissible in the Federal courts. But in Wolf v. People of tate of Colorado (1949), 338 U. S. 25, 69 S. Ct. 1359, 1361, 93 L. Ed. 1782, the Court explicitly stated that in a prosecution in a State court for a State

crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure.

In explanation of the rule, Justice Frankfurter made the following comment: "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. * * * Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment. But the ways of enforcing such a basic right raise questions of a different order. How such arbitrary conduct should be checked, what remedies against it should be afforded, the means by which the right should be made effective, are all questions that are not to be so dogmatically answered as to preclude the varying solutions which spring from an allowable range of judgment on issues not susceptible of quantative solution."

Appellant vigorously protested that the statute, partially exempting Anne Arundel County from the operation of the Bouse Act, will tend to give encouragement to the county police to violate the law by invading private homes to make searches and seizures without a warrant. A similar protest was made by the defendant in People v. Defore (1926), 242 N. Y. 13, 150 N. E. 585, 588, 589, but the Court of Ap-[fol. 23] peals of New York announced that it preferred the State rule to the Federal rule. In that case Judge Cardozo said in the opinion of the Court: "We are confirmed in this conclusion when we reflect how far-reaching in its effect upon society the new consequence would be. The pettiest peace officer would have it in his power through overzeal or indiscretion to confer immunity upon an offender for crime the most flagitious. * * * We do not know whether the public, represented by its juries, is to-day more indifferent to its liberties than it was when the immunity was born. If so, the change of sentiment without more does not work a change of remedy. Other sanctions, penal and disciplinary, supplementing the right to damages, have already been enumerated. No doubt the protection of the statute would be greater from the point of view of the individual whose privacy had been invaded if the govern-

ment were required to ignore what it had learned through the invasion. The question is whether protection for the individual would not be gained at a disproportionate loss of protection for society. On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice."

We now pass to the important question whether appellant was denied the equal protection of the laws when the Circuit Court for Anne Arundel County, in accordance with the 1951 statute, admitted illegally procured evidence against him at his trial for gambling, while the law makes illegally procured evidence inadmissible in trials for the same offense in twenty counties and the City of Baltimore.

Ever since the beginning of our Government, American political philosophy has been based upon principles of equality. Protection from unequal operation of the laws entitling a person to like privileges and burdens accorded to other persons in like circumstances is a basic American concept. It was thus natural that this concept was expressed in the guaranty of protection from arbitrary and unjust disparity of treatment contained in Federal and State Constitutions. The constitutional guaranty of equality is construed, however, to give full play to the powers of government so long as the exercise of those powers is clearly not an infringement of the rights of citizens.

[fol. 24] The principal guaranty of equality in American Constitutions is the clause in the Fourteenth Amendment to the Federal Constitution which provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." This amendment was proclaimed to be in force July 28, 1868. It was nearly five years afterwards when the Supreme Court construed the Amendment in the Slaughter-House Cases (1873), 16 Wall. 36, 81, 21 L. Ed. 394, 410. The Amendment had been submitted to the people to give protection to the Negroes, who had been recently emancipated, but those cases raised questions of the extent of the police power of the State and the granting of a monopoly. The Legislature of Louisiana had granted a monopoly of the slaughter-house business in New Orleans in favor of one corporation, thereby depriving many citizens

of the right to engage in that business. The Court held that the statute did not violate any provision of the Fourteenth Amendment and that the subject of local monopoly was for the States, not for the Federal Government, to deal with. In referring to the Equal Protection Clause, Justice Miller said in the opinion of the Court: "The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden. * * * We doubt very much whether any action of a state not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision."

That prophecy proved to be false. The majority of the litigants who have invoked the Equal Protection Clause have charged discrimination in economic legislation, rather than race discrimination. It is now universally recognized that the Equal Protection Clause guarantees that equal protection shall be given to all persons under like circumstances in the enjoyment of their civil and personal rights; that all persons are equally entitled to acquire and enjoy property; that they shall have like access to the courts of the country; that no impediment shall be interposed to the pursuits of any person except as applied to the same pursuits by others under like circumstances; and that no greater burdens shall be laid upon one than are laid upon [fol. 25] others in the same calling and condition. Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923.

It has been held that the power of the Legislature to regulate a busines or occupation cannot be exercised arbitrarily or in such a manner as to deprive a citizen of rights, privileges, or property to which he is entitled as a matter of natural justice, except for the protection of some substantial public interest; nor can such power be exercised in such a manner as to impose upon members of a selected class burdens which are not shared by others in like circumstances. In so far as a statute grants privileges to or places burdens upon an individual, or limits his rights, especially his right to engage in a particular business or occupation, a statute may be invalidated by an arbitrary or unreason-

able classification or discrimination in respect to territory. Herbert v. County Com'rs of Baltimore County, 97 Md. 639, 644, 55 A. 376; Watson v. State, 105 Md. 650, 655, 66 A. 635; Clark v. Harford Agricultural & Breeders' Ass'n, 118 Md. 608, 620, 85 A. 503; Criswell v. State, 126 Md. 103, 109, 94 A. 549. The classification must be reasonable and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, and the law shall apply equally to all persons similarly situated within the territory described in the act. Ocampo v. United States, 234 U. S. 91, 34 S. Ct. 712, 715, 58 L. Ed. 1231; Royster Guano Co. v. Commonwealth of Virginia, 253 U. S. 412, 40 S. Ct. 560, 64 L. Ed. 989; Ft. Smith Light & Traction Co. v. Board of Improvement, 274 U. S. 387, 47 S. Ct. 595, 597, 71 L. Ed. 1112. The classification is presumed to be reasonable in the absence of clear and convincing indications to the contrary, and the person attacking the classification has the burden of showing that it does not rest upon any reasonable basis but is essentially arbitrary. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 31 S. Ct. 337, 55 L. Ed. 369.

In State v. Shapiro, 131 Md. 168, 173, 101 A. 703, it was held by this Court that a statute requiring different rates of license fees for the privilege of dealing in junk, according to the population of the county or city in which the business is conducted, does not deny any person the equal protection of the laws. On the contrary, in Dasch v. Jackson, [fol. 26] 170 Md. 251, 269, 183 A. 534, the Court held that a statute providing for the licensing and regulation of paperhangers in the City of Baltimore denied equal protection of the laws, because it had no substantial relation to the public health or safety and there was no rational basis for the territorial classification. Likewise, we held that the Strip Mining Act, Laws 1947, Sp. Sess., ch. 16, which discriminated between operators of coal mines in Garrett County and those in Allegany County, was unconstitutional because there was no difference in the conditions in the two counties that would make strip mining a menace to public health and safety in Allegany but harmless in Garrett, and there was no rational basis for the territorial classification and no justification for the discrimination. Maryland Coal

& Realty Co. v. Bureau of Mines of State, 193 Md. 627, 69 A. 2d 471.

These principles have been recognized in cases dealing with statutes imposing licenses, taxes and other burdens in the exercise of the police power of the State. But those statutes are quite different from the statute now before us. This statute does no more than prescribe a rule of evidence.

It is true that one of the intermediate courts in New York has held that where a statute dealing with bastardy proceedings in all parts of the State outside of the City of New York permitted testimony of the defendant as to access by others without corroboration, another statute requiring corroboration of such testimony in proceedings brought in the City of New York was unconstitutional. Commissioner of Public Welfare v. Torres, 263 App. Div. 19, 31 N. Y. S. 2d 101. We are unwilling to base our decision on that opinion. The Equal Protection Clause contemplates the protection of persons or classes of persons against unjust discrimination by the State, but it has no reference to municipal or territorial arrangements made for different portions of the State that do not injuriously affect or discriminate between persons or classes of persons within the municipalities or counties for which such regulations are made. The State can establish any system of laws it sees fit for all or any part of its territory, provided that it does not encroach on the jurisdiction of the United States, and does not abridge the privileges and immunities of citizens of the United [fol. 27] States, or deprive any person of due process of law or equal protection of the laws. Thus it has been held that the Legislature has the power to declare that certain acts are criminal in some counties but not in others. Davis v. State, 68 Ala. 58, 44 Am. Rep. 128, 132; People v. Hanrahan, 75 Mich. 611, 42 N. W. 1124. For instance, the equal protection of the laws is not denied by a State local option law under which the traffic in intoxicating liquors may be made a crime in certain territory and permitted elsewhere. State of Ohio ex rel. Lloyd V. Dollison, 194 U. S. 445, 24 S. Ct. 703, 48 L. Ed. 1062.

In emphasizing the right of the State to establish its own system of laws, Justice Bradley said in State of Missouri v. Lewis (1880), 101 U. S. 22, 25, L. Ed. 989, 992: "If the State

of New York, for example, should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties, and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the 14th Amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the State should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to. For, as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances. * * * If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause of the 14th Amendment, there is no solid reason why there may not be such diversities in different parts of the same State."

It has always been the policy of the State of Maryland to permit the enactment of local laws affecting only one county or the exemption of particular counties from the operation of general laws or some provisions thereof. Stevens v. State, 89 Md. 669, 674, 43 A. 929, 931; Neuenschwander v. Washington Suburban Sanitary Commission, 187 Md. 67, 48 A. 2d 533, 600. Moreover, the right of a citizen to have his controversies determined by existing rules of evidence [fols. 28-30] is not a vested right. Rules of evidence relate to the remedies which the State provides for its citizens, and, like other rules affecting the remedy, they are subject at all times to modification by the Legislature. Mobile, Jackson, & Kansas City R. Co. v. Turnipseed, 219 U. S. 35, 31 S. Ct. 136, 55 L. Ed. 78; Luria v. United States, 231 U. S. 9, 34 S. Ct. 10, 58 L. Ed. 101. Rules of evidence are not a constituent part of any contract and are not of the essence of any right which a party may seek to enforce. Generally speaking, therefore, the State, having the right to control procedure in its courts, has the power to regulate the admissibility of evidence without denial of equal protection of the laws. Illinois Central R. Co. v. Paducah Brewery Co.,

157 Ky. 357, 163 S. W. 239, 242. We, therefore, conclude that the statute assailed by appellant does not violate the Equal Protection Clause.

For these reasons we hold that the paraphernalia, although procured by illegal search and seizure, were admissible. As we find no error in the ruling of the trial Court, the judgment of conviction will be affirmed.

Judgment affirmed, with costs.

Filed: February 5, 1953.

[fol. 31] IN COURT OF APPEALS OF MARYLAND

(DOCKET ENTRIES)

[Title omitted]

Three appeals in one record from the Circuit Court for Anne Arundel Co.

Filed: July 14, 1952.

July 24, 1952, Transcript of testimony rec'vd. and inserted in original record.

Dec. 12, 1952, Judgment affirmed with costs as to Rizzo and Nicholson. Reargument of constitutional question only ordered as to Salsburg.

Opinion filed. Op. Markell, C. J.

(Appeal as to Salsburg reargued Jan. 14, 1953)

Feb. 5, 1953, Judgment affirmed, with costs.

Opinion filed. Op. Delaplaine, J.

Mar. 5, 1953, Petition and Order Staying Mandate filed pending decision from United States Supreme Court.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 32] IN THE COURT OF APPEALS OF MARYLAND

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

To the Honorable Simon E. Sobeloff, Chief Judge of the Court of Appeals of Maryland:

Considering himself aggrieved by the final decision and judgment of the Court of Appeals of Maryland dated and entered February 5, 1953, in the above entitled case, Julius Salsburg, Appellant in this case, does hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decision and judgment in order that the same may be examined and reversed; that citation be issued in accordance with law; that an order be made with respect to the fixing of the amount of the appeal bond for the proper security for costs; and that the material parts of the record, proceedings and papers upon which said final decision and judgment was based, duly authenticated by the Clerk of the Court of Appeals of Maryland, be sent to the Supreme Court of the United States in accordance with the Rules in such case made and provided.

Petitioner files and presents herewith his Assignment of Errors and Statement of Jurisdiction as required by the Rules of the Supreme Court of the United States.

Respectfully submitted, Herbert Myerburg, Joseph Leiter, Louis M. Strauss, Attorneys for Appellant.

[fol. 33] IN THE COURT OF APPEALS OF MARYLAND

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

Julius Salsburg, Appellant in the above entitled cause, in connection with his appeal to the Supreme Court of the United States, hereby files the following Assignment of Errors upon which he will rely in his prosecution of said appeal from the final decision and judgment of the Court of

Appeals of Maryland entered herein on February 5, 1953.

The Court of Appeals of Maryland erred:

1. In holding that Chapter 704 of the Acts of the Maryland Legislature of 1951, amending Chapter 194 of the Acts of 1929, popularly known as the Bouse Act, (both of said laws being codified in Article 35, Section 5, Maryland Code, 1951 edition), does not violate the Equal Protection Clause of Section 1 of the 14th Amendment of the Constitution of the United States.

a. In explanation of this and the subsequent Assignment of Errors, Appellant desires to point out that the original Bouse Act (Ch. 194, Acts of 1929) rendered inadmissible in a trial of a misdemeanor any evidence procured as a result of an illegal search and seizure. Prior to the enactment of this statute, the common law of Maryland was that where evidence offered in a trial of either a misdemeanor or a felony is otherwise admissible, it will not be rejected because it was obtained illegally. This statute, as originally enacted, [fol. 34] was state-wide in its application. The challenged statute (Ch. 704, Acts of 1951) amended this statewide law by providing that nothing contained therein shall prohibit the use of illegally obtained evidence in the prosecution of a violation of the gambling laws of the State of Maryland (the same being a misdemeanor) in Anne Arundel County, one of the 23 counties of the State of Maryland.

(At the same session of the Maryland Legislature in 1951, the challenged statute was further amended by Chapter 710 so as to include Wicomico and Prince George's Counties in the exemption from the otherwise state-wide evidentiary rule of exclusion.)

2. In holding that the Appellant was not denied the Equal Protection of the Law under Section 1 of the 14th Amendment of the Conntitution of the United States by the admission in evidence against him at his trial for gambling (a misdemeanor) in the Circuit Court for Anne Arundel County (in accordance with Chapter 704 of the Acts of 1951) of illegally procured evidence, notwithstanding the law renders illegally procured evidence inadmissible in trials for the same offense elsewhere in the State of Maryland, namely, in 20 of the 23 Counties of the State and in Baltimore City,

which City is an autonomous municipality not within any County.

3. In holding that the Equal Protection Clause of Section 1 of the 14th Amendment of the Constitution of the United States has no reference or application to municipal or territorial arrangements made for different portions of the State where the law applies to all persons or classes within the municipalities or counties for which such regulations are made, notwithstanding the territorial classification in question is arbitrary and does not rest upon any reasonable ground of difference having a fair and substantial relation to the object of the legislation.

[fol. 36] 4. In holding that the secondary classification contained in Chapter 704 of the Acts of 1951, whereby it was made operative only against persons charged with the misdemeanor of "gambling" in Anne Arundel County but not against persons charged with any other misdemeanor in said County, does not violate the Equal Protection Clause of Section 1 of the 14th Amendment to the Constitution of the United States.

5. In holding that Chapter 704 of the Acts of 1951 does no more than prescribe a rule of evidence to which the Equal Protection Clause of Section 1 of the 14th Amendment of the Constitution of the United States does not apply and rejecting the Appellant's contentions that (a) where rules of evidence are made the subject of territorial classification the discrimination involved must be supported by a reasonable ground of difference between conditions in the territory selected and conditions in the territory not affected by the statute, and that (b) the subject matter of the challenged statute does more than prescribe a rule of evidence in that it impinges upon a fundamental right which is implicit in the concept of ordered liberty.

6. In holding that a presumption of reasonableness and constitutionality attended Chapter 704 of the Acts of 1951 and rejecting the Appellant's contention that no such presumption applied because the subject matter of the challenged statute impinges upon a fundamental right which is implicit in the concept of ordered liberty.

7. In affirming the action of the trial court which overruled Appellant's motion made prior to trial on the merits

to suppress the evidence illegally obtained and over-ruled Appellant's objections at the trial on the merits to the introduction of said evidence.

Wherefore, on account of the errors so assigned, Julius Salsburg, Appellant, prays that the said final decision and [fols. 36-64] judgment of the Court of Appeals of Maryland, dated and entered on February 5, 1953, be reversed, and for such other relief as the Court may deem fit and proper.

Herbert Meyerberg, Joseph Leiter, Louis M. Strauss,
Attorneys for Appellant.

[fol. 65] In the Court of Appeals of Maryland

[Title omitted]

Order Allowing Appeal to the Supreme Court of the United States and Fixing Amount of Bond for Costs—March 26, 1953.

The Petition of Julius Salsburg, Appellant in the above entitled case, for the allowance of an appeal in this case to the Supreme Court of the United States from the final decision and judgment of the Court of Appeals of Maryland dated and entered February 5, 1953, having been presented herein, accompanied by Petitioner's Assignment of Errors and prayer for reversal and the Statement as to the Jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the Clerk of the Court of Appeals of Maryland shall, within forty (40) days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of the Court of Appeals of Maryland, a true copy of the material parts of the record herein, which shall be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with

Rule 10, and such other rules as may be pertinent, of the Rules of the Supreme Court of the United States.

[fols. 66-87] It is further ordered that Petitioner shall give a good and sufficient cost bond in the sum of Two Hundred-fifty ($250.00) Dollars, conditioned that he shall prosecute said appeal to effect and answer all damages and costs if he fails to make his plea good.

And it is further ordered that citation shall issue in accordance with law.

Dated March 26, 1953.

Simon E. Sobeloff, Chief Judge of the Court of Appeals of Maryland.

[fol. 88] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 39

JULIUS SALSBURG, Appellant,

vs.

STATE OF MARYLAND, Appellee

STATEMENT OF POINTS TO BE RELIED UPON BY APPELLANT AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed April 16, 1953

1. Appellant adopts for his statement of points upon which he intends to rely in his appeal to this Court the points contained in his Assignment of Errors heretofore filed.

2. Appellant designates the following parts of the record herein for printing by the Clerk of this Court:

a. Appendix to brief of Appellant. (R. 1-15)
b. Two opinions of the Court of Appeals. (R. 16-28)
c. Docket entries of the Court of Appeals. (R. 31)
d. Petition for appeal. (R. 32)

e. Assignment of Errors. (R. 33-36)
f. Order allowing appeal. (R. 65-66)

Baltimore, Maryland.

Date: April 15, 1953.

Herbert Myerberg, Joseph Leiter, per HM, Munsey V. Balto, Louis M. Strauss, Attorneys for Appellant.

[fols. 89-90] Proof of service—(omitted in printing.)

[fol. 91] Supreme Court of the United States, October Term, 1953

No. 38

Julius Salsburg, Appellant,

vs.

State of Maryland

Order Noting Probable Jurisdiction—May 18, 1953

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.